



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/155422

PRELIMINARY RECITALS

Pursuant to a petition filed February 07, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to Child Care, a hearing was held on March 20, 2014, at Waukesha, Wisconsin. The case was held open for 10 days post-hearing to allow the Petitioner to submit information regarding training and days of attendance. No additional information was provided. The record closed on March 30, 2014.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,250.57 for the period of June 1, 2013 – September 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Lynnae Boyenga
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On June 5, 2013, Petitioner's employment ended with BSG Maintenance. Petitioner reported she was no longer employed to the W-2 agency on July 24, 2013. She did not report her change in circumstances to the child care agency.
3. On September 27, 2013, the agency issued a Child Care Overpayment Notice and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$2,881.29 for the period of June 10, 2013 – September 14, 2013.
4. In January, 2014, the agency received an employment verification and pay statements for the Petitioner from [REDACTED] verifying that Petitioner was employed from June 29, 2013 – July 13, 2013.
5. On February 15, 2014, the agency issued a revised Child Care Overpayment Notice and worksheet to the Petitioner informing her that the agency revised the overissuance to \$2,250.57 for the period of June – September, 2013. The adjustment was based on Petitioner providing information that she was employed for two weeks in July, 2013 and was eligible for child care benefits.
6. On February 7, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

In this case, the agency provided employment verifications to demonstrate that the Petitioner was employed through June 5, 2013 and from June 29 – July 13, 2013. Because she was working, Petitioner was eligible for child care benefits. The agency seeks to recover benefits for the period from June 5 – 28, 2013 and July 14 – September 15, 2013 because it asserts that the Petitioner was not in approved activity but she continued to send her children to child care. The agency provided a utilization listing showing the children did attend child care during the overpayment period.

The Petitioner asserted at the hearing that she was involved in approved training during the overpayment period. She did not present any evidence of the training so the record was held open to allow the Petitioner to provide the necessary evidence. No documentation was provided as proof of her eligibility for child care benefits during the overpayment period.

Based on the evidence, I conclude the agency presented sufficient evidence to demonstrate that the Petitioner was not in an approved activity during the overpayment period and was not eligible for child care benefits. The Petitioner presented no evidence to rebut the agency's evidence. Based on benefit issuance history, I conclude the agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,250.57 for the period of June – September, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,250.57 for the period of June – September, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

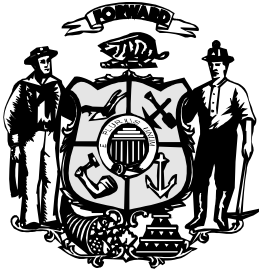
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of May, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 13, 2014.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Child Care Fraud